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STATE BAR NO. 5382
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5 (702) 949-8398/fax

6 Attorneys for Defendant, Mortgage Electronic
Registration Systems, Inc.
7

8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF NEVADA

10 SAM HUYNH,

11 Plaintiffs,

12 vs.

13 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; PRADO
14 MORTGAGE; DIRECT EQUITY
MORTGAGE; COUNTRYWIDE HOME
15 LOANS; et al.,

16 Defendants.

Case:

**DEFENDANT MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.'S NOTICE OF
REMOVAL OF CIVIL ACTION**

17 TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
18 THE DISTRICT OF NEVADA:

19 The removing party, Mortgage Electronic Registration Systems, Inc., respectfully shows:

20 1. Mortgage Electronic Registration Systems, Inc ("MERS"), is a Defendant in the
21 above-entitled action.

22 2. That the above-entitled action was commenced in the Eighth Judicial District Court
23 of the State of Nevada, in and for the County of Clark, and is now pending in that Court under the
24 designated Case No. A566611, Department XVII.

25 3. Process was served upon Petitioner MERS herein on August 5, 2008, by service
26 upon its resident agent.
27
28

1 4. This case involves claims by the pro se Plaintiff that the Defendants improperly
2 processed, serviced, and transferred his home mortgage loan. Although it is difficult to determine
3 from the Complaint exactly what the allegations against the named Defendants are, Plaintiff seems
4 to allege that Defendants did not properly make the disclosures required by 15 U.S.C. §1601 and
5 12 USC §2605, TILA, RESPA and HOEPA.
6

7 This case is one of many that have recently been filed across the country by homeowners
8 seeking to simply stall or delay foreclosure proceedings after the plaintiffs have long stopped
9 making the required mortgage payments.

10 5. Plaintiff's claims appear to be based on alleged violations of federal statutes.
11 Defendant denies such violations.
12

13 6. These claims are completely preempted by the provisions of the federal statutes and
14 Plaintiff's claims must be recharacterized as federal claims for relief.

15 7. Defendant MERS is entitled to remove this action to this Court under 28 U.S.C.
16 §1441 on the grounds that this Court has original jurisdiction over the subject matter of this action
17 under 28 U.S.C. §1331 in that, under the complete preemption doctrine, it is an action arising
18 under the laws of the United States, specifically the provisions of the National Bank Act and
19 provisions of the Truth in Lending Act, 15 U.S.C. §1601 et seq., 15 U.S.C. §2601, 1602(f) and
20 Regulation Z §226.2(a)(17).
21

22 8. Supplemental jurisdiction of any state law claims is proper under 28 U.S.C.
23 §§1367(a).

24 9. Thirty days have not elapsed since Defendant was served with the summons and
25 complaint in this action.

26 10. Copies of all process, pleadings and other orders served upon Petitioner are
27 attached hereto.
28

11. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Eighth Judicial District Court of the State of Nevada, Department XVII.

WHEREFORE, Petitioner prays that this action be removed.

DATED this 25 day of August, 2008.

LEWIS AND ROCA LLP

By 

J. CHRISTOPHER JORGENSEN, ESQ.

STATE BAR NO. 5382

DIANA S. ERB, ESQ.

STATE BAR NO. 10580

3993 Howard Hughes Pkwy., Ste. 600


Las Vegas, NV 89169

Attorneys for Defendant MERS

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that service of the foregoing document was made on the 25 day of August, 2008, by depositing a copy for mailing, first class mail, postage prepaid, at Las Vegas, Nevada, to the following:

Sam Huynh
7548 Kalmalii Avenue
Las Vegas, NV 89147
Pro Per Plaintiff


an employee of Lewis and Roca LLP

ORIGINAL

RECORDING REQUESTED BY Plaintiff Sam Huynh
AND WHEN RECORDED MAIL TO

FILED

Sam Huynh
7548 Kalmalii Ave.
Las Vegas, NV. 89147

JUL 2 9 17 AM '08

[Signature]
CLERK OF THE COURT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DISTRICT COURT
CLARK COUNTY NEVADA

SAM HUYNH

Plaintiff,

V.

Mortgage Electronic Registrations System, Inc.;
Prado Mortgage.; Direct Equity Mortgage;
Countrywide Home Loans; and Does 1-
X.Inclusive

Defendant.

Case No. A566611

Department: XV11

NOTICE OF PENDENCY OF ACTION
NRS 14.010 Et. Seq.

NOTICE OF PENDENCY OF ACTION

Notice is given that the above-entitled action was filed in the above-entitled court on June
____, 2008 by Sam Huynh Plaintiff, against Mortgage Electronic Registrations System,
Inc.; Prado Mortgage.; Direct Equity Mortgage; Countrywide Home Loans Defendants.
The action affects the title to a specific parcel of Real Property and the right to lawful
possession of the same, the property location is: 7548 Kalmalii Ave. Las Vegas, NV.
89147

1

Notice Of Pendency of Action

CLERK OF THE COURT

JUL 2 2008

RECEIVED

1 APN: 177-21-219-108

2 and whose Legal description is as follows:

3 Unit (202) Building (4) of Park Avenue Condominiums Unit (3) as shown by
4 Map thereof on file in Book (110) of Plats page (58), and as shown by
5 Amended Plat of a Portion of Park Avenue Condominiums Unit (3) as filed
6 in Book (116) of Plats Page (100) in the office of the County Recorder of
Clark County, Nevada

7 and which is identified in the complaint in this action. The property affected by the action
8 is located in the County of Clark, Nevada. The nature of the claims are (i)

9 DECLARATORY RELIEF (ii) INJUNCTIVE RELIEF (iii) FRAUD, (iv) Wrongful

10 Foreclosure (v) Defective Notices (vi) TO SET ASIDE FORECLOSURE SALE and (v)

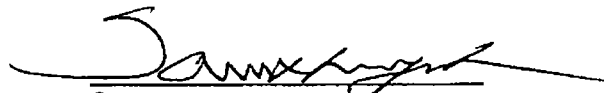
11 Slander of Title

12 Dated July 1st, 2008.

14

15

16


Sam Huynh
Attorney for Plaintiff in Pro Se.

17

ACKNOWLEDGMENT

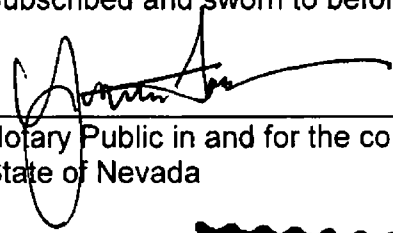
18

19

Subscribed and sworn to before me this 1st day of July, 2008

20

21

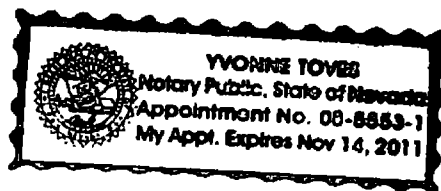

Notary Public in and for the county of Clark,
State of Nevada

22

23

24

25



26

27

28

1 COMP
2 Sam Huynh
3 7548 Kalmalii Ave.
4 Las Vegas, NV. 89147
5 (702)-461-6188
6 Attorney for Plaintiff in Pro Se

ORIGINAL

FILED

JUL 2 9 17 AM '08

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

148
8 SAM HUYNH

9
10 Plaintiff,

11 V.

12 Mortgage Electronic Registrations
13 System, Inc.; Prado Mortgage.; Direct
14 Equity Mortgage; Countrywide Home
15 Loans; and Does 1-X.Inclusive

16 Defendants.

CASE NO: A570606011

Department: XVII

COMPLAINT For:

1. DECLARATORY RELIEF
2. INJUNCTIVE RELIEF
3. FRAUD
4. TO SET ASIDE WRONGFUL FORECLOSURE Based on Fraud
5. To set aside Foreclosure Sale based upon Defective Appointment of Trustee and Notices
6. Slander of Title
7. Lender Fraud
8. Civil Conspiracy
9. Breach of Fiduciary Duty
10. Statutory Violations of RESPA

27
28 Plaintiff complains and for causes of action alleges as follows:

1
2 1. Plaintiff Sam Huynh at all times relevant has been a resident of the County of Clark,
3 State of Nevada and the owner of a parcel of Real Property, identified herein as: follows:
4 7548 Kalmalii Ave. Las Vegas, NV. 89147

5 APN: 177-21-219-108

6
7 and whose Legal description is as follows:

8 Unit (202) Building (4) of Park Avenue Condominiums Unit (3) as shown by
9 Map thereof on file in Book (110) of Plats page (58), and as shown by
10 Amended Plat of a Portion of Park Avenue Condominiums Unit (3) as filed
11 in Book (116) of Plats Page (100) in the office of the County Recorder of
12 Clark County, Nevada

13 2. Defendant Mortgage Electronic Registration Systems Inc., ("MERS") at all times
14 herein mentioned was doing business in the County of Clark, State of Nevada and
15 alleged to be the Beneficiary regarding Plaintiff' Real Property as described above
16 and as Situated in Clark County Nevada.

17 2. (b) Defendant Countrywide Home Loans ("Countrywide") at all times relevant was a
18 Mortgage Loan servicer and lender doing business in the County of Clark and the
19 State of Nevada and in that capacity had acquired the servicing rights to Plaintiff's
20 Mortgage.

21 3. Defendant Direct Equity Mortgage ("Direct Equity") at all times relevant was a
22 Mortgage Loan Broker doing business in the County of Clark and the State of Nevada
23 and in that capacity had introduced Plaintiff to Defendant Prado Mortgage

24 4. Defendant Prado Mortgage ("Prado") at all times relevant was doing business in the
25 County of Clark, and the State of Nevada as a funding source for mortgage loans.

26 5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
27 DOES I through X, inclusive, and therefore sues these defendants by such fictitious
28 names. Plaintiff will amend their complaint to allege their true names and capacities

1 when they have been ascertained.

2 6. Plaintiff is informed and believes and thereon alleges that, at all times herein
3 mentioned each of the defendants sued herein in relation to the property they claim
4 an interest in was the agent and employee of each of the remaining defendants
5 thereof and at all times was acting within the purpose and scope of such agency and
6 employment.
7

8 7. On or about May 2006 Plaintiff contacted Direct Equity in regards to obtaining a
9 loan for the acquisition of the foregoing referenced Real Property
10

11 8. On or about May, 2006, Plaintiff was introduced to Prado Mortgage ("Prado") who
12 agreed to finance this acquisition

13 9. Prado at all times herein mentioned and on information and belief used one of the
14 following or a substantially similar business model to originate mortgages to consumer
15 borrowers and then pledged them to a secondary lender such as an investment bank
16 or other financial institution in return for a loan under a revolving line of credit. (i)
17 Prado was provided a line of Credit, (ii) As Prado generated mortgages, it would draw
18 down on that line of credit to fund the mortgages until it had funded approximately
19 \$100 to \$150 million or more in loans. (iii) When its loan volume reached that point,
20 Prado would (iv)(a) issue bonds or notes to public investors that were secured by the
21 repayment stream from the mortgage loans, or (iv) (b) sell the notes to the credit
22 facilitator and (v) the securitization process would be underwritten by the investment
23 bank, and (vi) (a) if Prado issued the securities Prado would simultaneously repay the
24 credit line with part of the proceeds from the sales of the bonds and notes or (vi)(b) if
25 the lender securitized the loans Prado was paid a profit based on the nature of the
26 loan (vii) When and if Prado repaid its credit line, through either method the
27 investment bank released its lien. (viii) Under this revolving credit system, the
28 secondary lender provided both the credit facility, which Prado used to fund the

1 consumer mortgage loans, and underwriting services for Prado's public equity asset-
2 backed securitizations, (ix) The securitization process made possible a constant flow
3 of money to Prado, whereby the mortgage company was able to convert a long-term
4 revenue stream from the repayment of the mortgage loans to current income and to
5 capital with which to fund more loans. Meanwhile, the secondary lender would profit
6 from interest and fees as the credit line was repaid as well as from fees earned for
7 underwriting the securitizations. On information and belief Prado after the securitizing
8 of Plaintiff loan was either the loan servicer, for Plaintiff trust Deed and Note at issue
9 herein, or sold those rights to another mortgage company.

10 10. Under this scenario as described in paragraph (9) above the end result is a
11 division of the note into three parts, the lien holder, which under agreement is MERS,
12 and the real beneficiary are separated and divided into two parts and the note is
13 further separated from the payment stream and lien holder, and Note holder, thereby
14 creating yet a third division, which on information and belief would nullify a beneficial
15 interest in the Note as any beneficial interest has been so obscured by this separation
16 into three parts.

17 11. Defendant Prado upon funding caused Mortgage Electronic Registration Systems
18 ("MERS") to go on title as the "Nominee Beneficiary" in order to hide the true Identity
19 of the successive Beneficiaries when and as the loan was sold. MERS However acted
20 as if they were the actual beneficiary and signed documents as such. Which
21 documents and notices were signed unlawfully.

22 12. On information and belief a Nominee is a person or entity or organization in whose
23 name a security is registered though true ownership is held by another party, in other
24 words MERS is not the Beneficiary but is used to hide the true identity of the
25 Beneficiary. Based on this failure to disclose, and the lack of consideration paid by
26 MERS, Plaintiff alleges that the Deeds of trust were never perfected and are a nullity
27
28

1 as the MERS recording separates the Debt from the Lien, and this is more so
2 especially upon a sale of the Note and Trust Deed.

3 13. Plaintiff further alleges that MERS attempts to act as a Nominee for more than
4 one principal, and conceals their identity and that if a Nominee is the same as an
5 agent MERS can not act as an agent for multiple Banks, insurance and title
6 companies and Mortgage Companies because of a serious Conflict of interest.
7

8 14. In addition Plaintiff alleges that a Deed of Trust can not lawfully be held by a
9 Nominee who has no financial interest in the instrument without disclosing the true
10 Beneficiary and that where as here a party with No interest in the Note records it in his
11 name it is a Nullity.
12

13 15. Plaintiff further alleges that MERS failure to transfer Beneficial interests as the
14 Note and deed are sold further renders the Deed recording a nullity.
15

16 16. On information and Belief MERS was not and is not an Agent and has NO right to
17 act for or on behalf of or as a Beneficiary, but is merely a Nominee who holds title in
18 his, her or their name for another, and their title as recorded is defective as the
19 Beneficiary is not disclosed, therefore Plaintiff alleges on information and belief that
20 true title was never perfected for this loan.
21

22 17. On information and belief Prado sold the loan immediately after funding and the
23 servicing rights, which on information and belief were transferred to Countrywide Home
24 Loans.
25

26 18. That on or about November 2007 Plaintiff attempted to a modification of his loan
27 and in that regard had contacted Countrywide, who declined to offer Plaintiff any
28 assistance

1 18. (b) On or about June 2008 Plaintiff became in default of the said loan

2 19. Countrywide was negligent and allowed the wrong party to begin the foreclosure
3 process as Neither MERS or Countrywide were the Beneficiary of this Loan. In
4 addition a trustee has not lawfully been appointed.
5

6 19. (b) that MERS, and Countrywide each claim to be the beneficiary of Plaintiff's
7 Note

8 20. That none of the Defendants are the Beneficiary under the said Note and Deed(s)
9 of trust.
10

11 21. On information and belief Plaintiff alleges that Prado Sold the Trust Deed and note
12 and transferred them by indorsement or assignment to other investors who on several
13 occasions did the same until these Note(s) and Deed(s) were ultimately securitized
14 bundled, pooled and marketed and sold to investors as a mortgage backed security.
15

16 22. On Information and belief Countrywide purchased the servicing rights to these
17 loans where from Countrywide was paid between 1/4 and 1/2 of a percent for servicing
18 them.

19 23. Plaintiff alleges that Mortgage-Backed Securities resemble bonds, instruments
20 issued by governments and corporations that promise to pay a fixed amount of
21 interest for a defined period of time. Mortgage-Backed Securities: are Bond-type
22 investment securities representing an undivided interest in a pool of Mortgages or
23 trust deeds.
24

25 24. Mortgage-Backed Securities are created when a company such as but not limited
26 to Bear Stearns, Fanny May, Freddie Mac or Ginny May "BUYS" a bunch of Trust
27 Deeds from a primary lender, such as but not limited to one or more of the
28

1 Defendants herein or some other unknown lender or investor in their up-line, who then
2 bundles them into a public offering, and then uses the monthly payment of thousands
3 of borrowers, as the revenue stream to pay investors who have "BOUGHT" chunks of
4 the offering.
5

6 25. Plaintiff is also informed and believes that these Notes have been securitized to
7 more than one investor at the same time, which is and would be a Fraud. Plaintiff has
8 attached hereto and Incorporates here in as EXHIBIT "A" a true and correct article
9 taken from the New Your Times which is one of many articles and witnesses that will
10 be called that support this allegation. .
11

12 26. On information and belief Plaintiff alleges that none of the Defendants herein have
13 a valid power of appointment as Trustee, and are not the Beneficiary and that the sale
14 of Plaintiff property will be a nullity. .
15

16 27. ("MERS") is solely a registration service and has NO interest in the Loans, or any
17 servicing rights, and records the deed in their name as a "NOMINEE" Beneficiary only
18 for the purpose of hiding the true identity of the real Beneficiary as these Notes are
19 sold and transferred and ultimately find their way into one or more trusts. MERS is
20 "strictly" a registration system and nothing more, they make NO investment in these
21 Trust Deeds and they don't even hold the notes or service the loans. MERS was
22 never the Beneficiary as they claim, or even an agent of the Beneficiary, but used to
23 hide the true identity of the Beneficiary, as such there is a question of the Validity of
24 the recording of the MERS Nominee Deed, and the assignments from MERS.
25
26
27
28

1 28. On information and belief MERS records the deeds in their name to conceal the
2 true identity of the Beneficiaries as and after the loan is sold and packaged into a
3 security.

4
5 29. On information and belief, by MERS recording the loan in their name and no
6 further recording taking place, the Note is thereafter available to be securitized by two
7 or more lines of investors simultaneously thus allowing an opportunity for the Note
8 to be used for a Fraudulent purpose which on information and belief has occurred on
9 numerous occasions and with Plaintiff Note.

10
11 30. A MERS Deed recording never discloses the true Identity of the Beneficiary

12 31. While MERS remains on title as a "nominee" for the TD and Note both are sold on
13 one or more occasions afterward and ultimately bundled as a security and sold to a
14 final investor. MERS actually helps to conceal who the real beneficiary is in violation
15 of Nevada statutory law. The Beneficiary is completely shielded and not disclosed as
16 required. Also the forms that they use to give Notices are defective as they lack the
17 required disclosures and are generally ambiguous lacking clarity as to the true nature
18 of the party giving the said notice.

19
20 32. Plaintiff has attached hereto and Incorporates herein as Exhibit "B" true and
21 correct copies of decisions of the Federal Court of Ohio relating to alleged lenders
22 who attempted to foreclose on borrowers and were unable to substantiate their
23 ownership of these Notes Some (40) creditor attempts to foreclose were dismissed.

24
25 33. An actual controversy has arisen and now exists between Plaintiff and defendants
26 concerning their respective rights, obligations and duties in that Plaintiff contends that
27 none of these defendants had a right to foreclose on Plaintiff deed of trust, whereas
28

1 defendants dispute these contentions and contend that irrespective of the fact that
2 they do not own this security and have sold this security and are no longer the
3 Beneficiary, nor have a power of appointment as a Trustee, and that none of them
4 can produce the original note and or chain of title or paid a valid consideration for
5 these assignments, and that additionally as the recording of these Deeds are a nullity
6 under Nevada Law that regardless they have a right to foreclose.
7

8 34. Plaintiff desire a judicial determination of Defendants rights, obligations and
9 duties, and a declaration as to who owns Plaintiff' deed(s) of trust and who has a right
10 to the payments there under and to foreclose thereon, and whether Plaintiff' Property
11 was wrongfully foreclosed.
12

13 35. A judicial declaration is necessary and appropriate at this time under the
14 circumstances in order that Plaintiff may ascertain his rights, obligations and duties
15 and to whom they are owed, and what he owes. Plaintiff is under a financial burden
16 and emotional strain which he is suffering due to this unsettled state of affairs.
17

18 36. If these Defendants are allowed to perfect their foreclosure on Plaintiff' note and
19 they are not as Plaintiff believes entitled to do so. Plaintiff will be irreparably damaged
20 in the loss of his property, and his investment in the same.
21

22 FIRST CLAIM FOR RELIEF
23 FOR DECLARATORY RELIEF AGAINST
24 ALL DEFENDANTS

25 37. Plaintiff re-alleges and Incorporates all prior allegations as set forth above.

26 38. Plaintiff alleges that none of the Defendants can be acting as a trustee or
27 successive trustee because they were NOT appointed by a legitimate Beneficiary and
28 therefore have no right to foreclose on his note and deed of trust and the Notices as

1 and when recorded are and were invalid because they were not authorized by the
2 Beneficiary or recorded as required by Nevada Law
3

4 39. Plaintiff further alleges on information and belief that the real Beneficiary is
5 currently being concealed and that this is a further and additional violation of Nevada
6 Statutory Law.
7

8 40. An actual controversy has arisen and now exists between Plaintiff and defendants
9 concerning their respective rights, obligations and duties in that Plaintiff contends that
10 none of these defendants have a right to foreclose on Plaintiff Trust Deed(s),
11 whereas defendants dispute these contentions and contend that irrespective of the
12 fact that they Sold their interest in these notes, and do not own the security and are
13 not the holders of any note in due course or otherwise, and can not produce the
14 original note and chain of title with proper indorsements or assignments over to them,
15 and that they are neither the Trustee lawfully appointed or the Beneficiary having paid
16 real consideration for this Note and that the Recorded Deed is a nullity, that they have
17 a right to foreclose.
18

19
20 41. Plaintiff desire a judicial determination of Defendants rights, obligations and
21 duties, and a declaration as to who owns Plaintiff Trust Deed and Note and who has a
22 right to the payments there under and whether the foreclosure if completed will be
23 valid and enforceable.
24

25 42. A judicial declaration is necessary and appropriate at this time under the
26 circumstances in order that Plaintiff may ascertain their rights, obligations and duties
27 and to whom they are owed, and what amount.
28

1 43. Plaintiff is under a financial burden and emotional strain which they are suffering
2 due to this unsettled state of affairs.

3 44. If Defendants are allowed to perfect their foreclosure on Plaintiff note and they are
4 not entitled to do so Plaintiff will be irreparably damaged in the loss of their property,
5 and their investment in the same.
6

7
8 SECOND CLAIM FOR RELIEF
9 FRAUD BY DECEPTION
10 DEFENDANTS:

11 Mortgage Electronic Registrations System, Inc.,
12 Prado

13 45. Plaintiff re-alleges and incorporates all prior allegations as set forth above
14 46. Defendants and each of them have represented to Plaintiff and to third parties that
15 they were the owner of the Trust Deed and Note regarding Plaintiff real property.

16 47. Plaintiff has relied on the representations of Defendants and has attempted to
17 negotiate in good faith believing they were the owner of the TD and Note, and that
18 they had a real and valid ability to foreclose on Plaintiff's home.

19 48. Plaintiff relied on the representations of these defendants and his reliance was
20 justified.

21 49. Plaintiff has recently learned that the Representations made by Defendants were
22 not true and that these Defendants or any of them are not THE OWNER of the Trust
23 Deed and Note evidencing Plaintiff TD, or the lawfully appointed trustee, however
24 they are moving ahead with a foreclosure on Plaintiff' Note and Trust Deed by
25 deception misrepresenting their ownership and legal authority and at the time they
26 made the representations for the foreclosure they knew that they had no legal
27 authority to do so.
28

1 50. Defendants knew at the time they made these representations to Plaintiff that they
2 were untrue, and know at the time that they were in the process of foreclosing on
3 Plaintiff Trust Deed and note that they had no right to do so.

4
5 51. Due to Plaintiff reliance on Defendants representations they have been damaged
6 in an amount that currently exceeds \$800,000 and additionally they may be forced to
7 expend the cost and expenses of moving out of their property and the costs to
8 relocate back to the subject Property as well as legal fees to defend against this
9 fraudulent Foreclosure.

10
11 52. Defendants conduct as set forth above was intentional, oppressive fraudulent and
12 malicious so as to justify an award of exemplary damages and that their conduct was
13 in reckless disregard for Plaintiff financial or emotional well being and therefore
14 Plaintiff request exemplary damages of \$5,000,000.

15
16 PLAINTIFF THIRD CLAIM FOR RELIEF
17 Negligence
Defendant Countrywide

18 53. Plaintiff re-alleges and incorporates all prior allegations as set forth above

19 54. On or about June 2008 MERS or Countrywide authorized the trustee to begin the
20 foreclosure process, at the time of the "authorization" neither of these defendants were
21 the Beneficiary of this Note and Trust Deed as Countrywide was only the servicer of
22 the loan, and MERS was never a real Beneficiary. However even though neither one
23 of these Defendants were the Beneficiary each claimed that interest, especially
24 Countrywide.

25
26 55. Plaintiff is informed and believes and based thereon alleges that Countrywide has
27 been named a defendant in several lawsuits alleging that the sale of real property at
28

1 auctions were unlawfully carried out, therefore they either knew or should have known
2 that they lacked the authority they are exercising.

3 56. By virtue of the Nature of a Non Judicial foreclosure, Countrywide owed Plaintiff a
4 special duty of care to insure that the proper party was attempting to foreclose on their
5 property
6

7 57. That Countrywide was negligent and breached this duty of care and their breach of
8 this duty is the direct and proximate cause of Plaintiff damage and injury.

9 58. That by virtue of Defendants negligence Plaintiff has had their home wrongfully
10 placed in foreclosure by a loan servicer rather than the Beneficiary.

11 59. Plaintiff has therefore suffered and will continue to suffer damages that are
12 ongoing but at this time are believed to exceed \$1,000,000.
13

14 60. That these damages were foreseeable by Countrywide, as they were not lawfully
15 appointed Trustee or properly authorized to issue the foregoing and stated notices or
16 to foreclose on Plaintiff's Real property.
17

18 **Alternatively**
19 **PLAINTIFF FORTH CLAIM FOR RELIEF**
20 **TO SET ASIDE THE FORECLOSURE SALE**
21 **AND REINSTATE PLAINTIFF ON TITLE.**
22 **ALL DEFENDANTS**

23 61. Plaintiff re-alleges and incorporates all prior allegations as set forth above

24 62. If Plaintiff's property is sold at an auction, the sale will not be carried out as
25 required and authorized by virtue of and under Nevada Law.

26 63. The sale will be wrongfully carried out and Plaintiff's property will have been
27 unlawfully sold at the direction of these defendants.
28

1 64. Defendants did not and do not have permission or consent for the sale to take
2 place nor did they have proper notices recorded under Nevada Law, Nor were they the
3 Beneficiary or trustee at the time of the commencement of the Foreclosure and sale.
4 Plaintiff request the court to set aside the sale and reinstate Plaintiff on title.
5

6 PLAINTIFF FIFTH CLAIM FOR RELIEF
7 SLANDER OF TITLE
8 ALL DEFENDANTS

9 65. Plaintiff re-alleges and incorporates all prior allegations as set forth above

10 66. Plaintiff alleges that defendants are in the process of filing and recording against
11 Plaintiff's Real property a notice of Default and Intent to foreclose and thereafter set a
12 sale date and thereafter sold the property and will record a trustee's deed taking title
13 form Plaintiff who are rightfully entitled thereto.

14 67. That these recordings will be wrongfully recorded, and unlawfully recorded and are
15 an intentional, knowing and willful act.

16 68. That this recording of these false notices which were or should have been know by
17 the defendant at the time of their recording has Slandered Plaintiff title to his real
18 property and that Plaintiff has been damaged by this act and therefore seeks
19 exemplary as well as actual damages for Defendants knowing and improper
20 misconduct of \$5,000,000
21
22

23 PLAINTIFF SIXTH CLAIM FOR RELIEF
24 FRAUD IN lending practices
25 DEFENDANTS MERS, Countrywide, and Prado
26 Plaintiff request either
27 Reformation Of Contract Based On Lender FRAUD
28 Which Caused A Partial Failure Of The Consideration
Secured By The Note And Trust Deed
or
Fraud Damages if her property is foreclosed

1 69. Plaintiff re-alleges and incorporates all prior allegations as set forth above.

2 70. On information and belief Plaintiff alleges that each of the Defendants and
3 especially these co-conspirators and unnamed defendants Deutsche Bank and JP
4 Morgan intentionally and knowingly created a model that was intended to cause a
5 spiral of inflation and then a collapse of the Real Estate Market by expanding the sub
6 prime base and lending money to borrowers that they knew lacked the means to repay
7 the loans, and to insure that the borrowers would collapse under the weight of the
8 Mortgage payments they initiated an ARM type of standard loan with payments that
9 graduated over periods of time.
10

11
12 71. That evidence has been available to the lending community dating to 1995 which
13 showed and established that Sub-prime loans had traditionally been a problem even
14 with fixed rate loans.

15 72. That armed with this vast array of knowledge, Deutsche Bank, Countrywide and
16 Prado and these defendants created and modeled an industry standard for these
17 loans which included among other criteria less stringent requirements, such as No
18 doc loans and ARM'S (Adjustable Rate Mortgages) all calculated to lend the borrower
19 to early default and foreclosure.
20

21 73. Plaintiff alleges on information and belief that in 1933, in the wake of the 1929
22 stock market crash and during a nationwide commercial bank failure and the Great
23 Depression, two members of Congress put their names on what is known today as
24 the Glass-Steagall Act (GSA).
25

26 74. This act separated investment and commercial banking activities. At the time,
27 "improper banking activity", or what was considered overzealous commercial bank
28

1 involvement in stock market investment, was deemed the main culprit of the financial
2 crash. The Glass-Steagall Act was written to limit the conflicts of interest when
3 commercial banks are permitted to underwrite stocks or bonds.
4

5 75. On information and belief Plaintiff alleges that for more than 20 years the Banking
6 industry whittled away at Glass-Steagall before finally breaking down its regulatory
7 restrictions in August 1987 that was when *Alan Greenspan* -- (formerly a director of
8 J.P. Morgan) and a proponent of banking deregulation -- became chairman of the
9 Federal Reserve Board.
10

11 76. Plaintiff alleges that with Greenspan in charge, in 1990, J.P. Morgan became the
12 first bank to receive permission from the Federal Reserve to underwrite securities, so
13 long as its underwriting business did not exceed a 10 percent limit.
14

15 77. In December 1996, with the support of Chairman Alan Greenspan, the Federal
16 Reserve Board issued a precedent-shattering decision permitting bank holding
17 companies to own investment bank affiliates with up to 25 percent of their business in
18 securities underwriting (up from the 10 percent limit).
19

20 78 This expansion of the loophole created by the Fed's (Greenspan) 1987
21 reinterpretation of Section 20 of Glass-Steagall effectively rendered Glass-Steagall
22 obsolete
23

24 79. In 1999, after 25 years and \$300 million of the banks lobbying efforts, Congress,
25 aided by President Bill Clinton, finally repealed Glass-Steagall. This paved the way for
26 the problems we are now facing.
27

28 80. After the demise of Glass-Steagall JP Morgan and defendants with their
subsidiaries began to make loans with the idea that those loans would be securitized

1 and sold off to investors, this allowed for two things, (i) immediate profits, and (ii) no
2 requirement to maintain loans against capital reserves. In other words the Banks
3 could make unlimited numbers of loans and had a ready market to dispose of them
4 through investors, thereby enhancing their profits through the points and underwriting
5 and associated loan fees they made up front, and the stream in excess of the actual
6 loan amount they received from the sale of the Notes and Trust Deeds or Mortgages.
7

8 81. To further this scheme Defendant Deutsche Bank AG, initiated a meeting at
9 which Goldman Sachs Group Inc., Bear Stearns Cos., Citigroup Inc., and JPMorgan
10 Chase & Co. were invited and were present and conceived the sub prime model that
11 they securitized and marketed to investors as Derivatives, "Mortgage Backed
12 Securities" This group became known as the "Group of Five"
13

14 82. Derivatives are a very dangerous instrument as they are based on a value that the
15 contracting parties have no interest in, the value is based on the value of the debt
16 secured and the credit of the borrower which for sub prime loans was at best
17 questionable.
18

19 83. Plaintiff is informed and believes that At the time the Group of (5) developed the
20 marketing strategy and scheme to market large numbers of Sub Prime Loans they
21 had in front of them reports from the American Bankers association, Inside Mortgage
22 Finance and the Federal Reserve System that demonstrated by charts and graphs,
23 that during the period from 1995 through 2003 Sub Prime loans even on Fixed
24 interest rates had an unusually high rate of failure and default. Armed with this
25 knowledge the Banks determined to move ahead knowing that they would end up with
26 a large number of defaults and foreclosures and that these large numbers of defaults
27
28

1 and foreclosures would destroy the Mortgage Market and they would end up
2 foreclosing on millions of these Notes and the homes secured by them.

3 84. Loans were made through warehouse lines established by the banks for their
4 subsidiary Mortgage Companies which they acquired or establish to enter this
5 temporary but lucrative market, then sold by the initiating lender to its up-line bank,
6 that bank immediately sold the loan to its up-line, sort of like a reverse Multiple Level
7 Marketing program.
8

9 85. Ultimately after sales sometimes as many as 5 to 8 up-line sales the loans were
10 bundled into a group of 9000 or more loans and sold to a corporation or LLC or one
11 was created for the purpose where the debt instruments were securitized and sold off
12 in chunks through Wall Street to high income and average investors.
13

14 86. In many instances Plaintiff is informed and believes the Notes securing Real
15 Property were securitized to more than one source which act constitutes Fraud.
16

17 87. Many of these packages were actually underwritten by the banks themselves.

18 88. One bank in the chain retained the servicing rights to these loans or sold those
19 rights off separately. Because of the confusion, and the multiple sales and multiple
20 repurchase agreements between the banks and the entities (some times more than
21 one) that hold the debt securities, in most cases the wrong party today is attempting
22 to foreclose on Mortgage loans. And in the instant case these defendants are the
23 incorrect party.
24

25 89. Greenspan and the banking industry set the pace for this disaster through their
26 negligence, or intent which was exacerbated by greed. They have just duplicated the
27 events that caused the Market and Bank crash of 1929. Bear Sterns, Citibank, Merrill
28

1 Lynch and Washington Mutual were on the verge of collapse until they were bailed
2 out by money that may have come from the Mid East, and several other major banks
3 are on the edge of this same collapse, to date more than 254 Bank related Mortgage
4 companies have so far failed including, New Century Mortgage, and all of this was
5 foreseen by these defendants, as this defendant on information and belief when their
6 own product was securitized shorted those securities to make even larger profits at
7 the risk to their own investors. In addition Plaintiff is informed and believes that the
8 internal book keeping department at Deutsche bank knew and reported the problem
9 early on and before the sub prime mess got out of control. Deutsche bank knew or
10 should have known that there sub prime product was destined to cause a market melt
11 down.
12
13

14
15 90. Plaintiff alleges on information and belief that by 2003 most creditworthy
16 borrowers had already refinanced their houses at 2003's record-low mortgage rates.

17 91. Plaintiff further alleges that by 2004 there was a Global "investor" demand for
18 these derivatives, "Mortgage Backed Securities". To meet this demand Wall Street
19 had to find a new source of loans. Those still available mainly involved subprime
20 borrowers, who paid higher rates because they were seen as credit risks.
21

22 92. Plaintiff alleges on information and belief that In February of 2004 Representatives
23 of five Wall Street banks met to put together the Sub Prime Mortgage loan model
24 which included the securitizing of Sub Prime Mortgage, and Trust Deed Notes. Those
25 Banks on information and belief were Defendant Deutsche Bank AG, Goldman Sachs
26 Group Inc. Bear Stearns Cos. Citigroup Inc., and JPMorgan Chase & Co.
27

28 93. Plaintiff is also informed and believes that the foregoing Banks plus at least 50

1 other traders and lawyers met at Deutsche Bank's Wall Street office to help set the
2 trading rules and design the new "Sub Prime" product.

3
4 94. Plaintiff is also informed and believes that the Traders called themselves the
5 "group of five," and that meeting became a turning point in the history of Wall Street
6 and the global economy, in fact it destroyed both..

7 95. Plaintiff is further informed and believes that at subsequent meetings The group
8 of five and their attorneys designed new standardized contracts that would
9 allow firms to protect themselves from the risks of subprime mortgages, enable
10 speculators to bet against the U.S. housing market, and help meet demand from
11 institutional investors for the high yields of loans to homeowners with problem
12 or substandard credit. Therefore they KNEW that these loans would default in large
13 numbers
14

15 96. The tools they designed were so negligently or intentionally thought out and
16 designed that they magnified losses so much that a small number of defaulting
17 subprime borrowers could and did devastate securities held by banks and pension
18 funds globally, freeze corporate lending, and bring the world's credit markets to a
19 standstill.
20

21 97. The standardized contract the group of Five created for mortgage-backed
22 securities were complicated, layered instruments intending to shield the banks from
23 Exposure and lawsuits.
24

25 98. The subprime boom for a short period of time enriched investment bankers,
26 lenders, brokers, investors, realtors and credit-rating companies. It allowed hundreds
27 of thousands of Americans to buy homes they never believed they could afford, and in
28

1 fact they couldn't.

2 99. In New York, the ratings companies Standard & Poor's, Moody's Investors Service
3 and Fitch Ratings put their stamp of approval on securities backed by loans to people
4 who couldn't afford them. They disregarded documentary evidence that these
5 securities were in fact flawed and a crisis waiting to happen. They failed to take into
6 consideration or use historical data to grade the securities and failed to adjust to the
7 widespread weakening of criteria used to qualify high-risk borrowers.
8

9 100. On information and belief Deutsche Bank's intent--on that February evening in
10 2005: was to design a new financial product that would standardize mortgage-backed
11 securities, including those based on high-yield subprime loans, paving the way for
12 their rapid growth and their ultimate collapse.
13

14 101. In February 2005, pension funds, banks and hedge funds owned fixed-income
15 securities that were earning returns close to historic lows. AAA-rated securities based
16 on home loans offered yields averaging a full percentage point higher than 10-year
17 Treasuries at the time and the rating companies were ready and willing to place their
18 stamp of approval on this flawed concept.
19

20 102. The banks wanted more mortgage-backed securities to sell to clients. Creating a
21 standardized "synthetic" instrument, or derivative, would leverage small numbers of
22 subprime mortgages into bigger securities. In this way, the firms could produce
23 enough to meet global demand.
24

25 103. As the group nailed down the details, the International Swaps and Derivatives
26 Association, which sets trading terms for dealers, arranged conference calls including
27 more of Wall Street to promote the securities.
28

1 104. At this point, some of the biggest mortgage underwriters -- Lehman Brothers,
2 Merrill, Bank of America Corp. and Morgan Stanley -- became part of the Group.

3 105. By June, of 2005 a new contract was agreed upon and was endorsed by all of
4 the members, and other remaining banks that hadn't been party to the group of five
5 negotiations signed on, this includes Deutsch Bank who initiated the concept. The
6 banks would go on to create similar derivative contracts to trade securities backed by
7 loans for commercial buildings and collateralized debt obligations, or CDOs, which are
8 securities backed by various kinds of debt including Credit Card, and Student and
9 auto Loans.
10

11
12 106 The banks then created an index to represent the market and help hedge general
13 market exposure. It was called the ABX-HE and would be similar to the indexes
14 traders use for baskets of stocks. The participants believed, that the index would add
15 to the market's liquidity, or depth, by attracting more trading.
16

17 107 The new derivatives were a hit among the group of five's customers -- the banks
18 and other institutional investors bought them to lock in high yields.

19 108. Plaintiff is informed and believes that by September 2005, some within Deutsche
20 Bank were already beginning to worry about defaults on subprime mortgages and
21 how that might affect the securities based on them, and that a team of Deutsche Bank
22 analysts that month warned of growing subprime market risks. Yet the Banks moved
23 ahead full steam creating these loans, knowing that they would collapse.
24

25 109. The ABX-HE index started trading on Jan 19, 2006. At 8 a.m. Shortly after the
26 opening, Quotes from brokers selling the ABX were dropping, an indication that a
27 number of investors wanted to short the securities.
28

1 110. On its first day, the index traded more than \$5 billion. The cost of wagering
2 against the securities was rising, a sign that traders saw an increased chance of
3 default, however even knowing this problem existed, the banks and the defendants
4 herein continued to promote sub-prime loans to people who couldn't afford the
5 monthly payments.
6

7 111. Plaintiff is informed and believes that in the months to come, Deutsche Bank and
8 at least one other member of the group of five, Goldman Sachs, began using
9 subprime derivative contracts to bet the other way "Short Selling" and profit from a
10 market destined to collapse.
11

12 112. Deutsche Bank having created the **Model** had "insider knowledge" of the
13 damaging events that were about to unfold in the U. S housing market. They new the
14 risks of a downturn were significant enough to justify the millions of dollars it would
15 cost to "short," or wager against, subprime securities. And they invested to obtain a
16 six-fold return.
17

18 113. Plaintiff alleges that the derivatives the group of five helped create –and that ALL
19 banks and lenders participated in including the original lender of Plaintiff and which
20 banks packaged into Collateral Debt Obligations–CDOs -- caused the subprime crisis,
21 and the depreciation of homes and the loss of their value and that these Defendants
22 and each of them participated in and were part of the cause of this sub-prime crisis
23 and the loss of the value of Plaintiff real property. And that they knew at the time that
24 the loan was made to Plaintiff that he would be caught up in this mess and they would
25 ultimately foreclose on their home.
26
27

28 114. Plaintiff alleges that the banks and particularly the defendant herein Planned and

1 artificially created a run of inflation by making loans to anyone who could sign an X by
2 their name as long as they were breathing, then intentionally crashed the market by
3 stopping to make such loans and viciously foreclosing on the sub prime and prime
4 lenders caught up in the swindle created by Deutsche Bank

5
6 115. Plaintiff alleges that due to the Fraud and concealment or at best the negligence
7 of the defendant Deutsche Bank or their lack of concern for home borrowers as they
8 were profit motivated the value of Plaintiff home has diminished substantially and
9 Plaintiff have lost a significant equity therein and to add insult to injury Defendant
10 Deutsche Bank then authorizes a foreclosure but had no right to do so.
11

12 116. Defendants breached that duty of care owed to Plaintiff by their greed, Fraud and
13 or negligence in causing the Direct Equity Mortgage to rise by making loans to people
14 they could not repay the loan then fall as the defaults rose and bank foreclosures
15 became a staple leaving Plaintiff with a Mortgage and Note that exceeded the value of
16 their home.
17

18 117. That the acts of these Defendants' were the direct and proximate cause of
19 Plaintiff injury and damages.
20

21 118. That by virtue of Defendants carelessness Plaintiff have been damaged in the
22 loss of the equity in their home as well as the loss of a substantial value therein and
23 the actual loss of their property.
24

25 119. That Plaintiff relied on the representations and or their concealed facts and their
26 reliance was justified, and in doing so they have been damaged in the loss of equity in
27 their home and their credit standing.
28

120. That due to the actual Fraud of these defendants Plaintiff consideration for the

1 Note and Mortgage has partially failed and their property has declined in market
2 value.

3 121. That Plaintiff seeks (i) restitution of their property (ii) that the sale be set aside
4 and (iii) a Reformation of the Note and Mortgage to the actual present value of their
5 home less their equity at the time of the loan, as will be demonstrated at the time of
6 trial, plus Actual damages, Special Damages and Exemplary damages.

7
8 122. That by virtue of Defendants fraud which amounts to oppression and Malice
9 Plaintiff is entitled to exemplary damages of \$10,000,000.00
10

11 PLAINTIFF SEVENTH CLAIM FOR RELIEF
12 CIVIL CONSPIRACY
13 To Prevent Borrowers from paying off their mortgages
14 DEFENDANT
MERS and Countrywide
Does 1-X and Roes 1-X

15 123. Plaintiff re-alleges and incorporates all allegations as set forth above.

16 124. Plaintiff is informed and believes and thereon alleges that, at all times herein
17 mentioned each of the defendants sued herein was the agent and employee of each
18 of the remaining defendants and were at all times acting within the purpose and scope
19 of such agency and employment.

20 125. On or about May, 2006 and prior thereto, Defendant MERS, and Prado and the
21 other un named defendants and the Doe Defendants and each of them knowingly and
22 willfully conspired and agreed among themselves to place Plaintiff and others in an
23 interest rate and with loan terms that was in excess of the rate or loan they were
24 qualified for, in order that Deutsche Bank and JP Morgan would ultimately acquire
25 their loan and foreclose thereon, taking out foreclosure insurance therefore to insure
26 against loss.

27 126. Plaintiff is informed and believes that their notes were securitized to more than
28 one trust of which either JP Morgan, or Deutsche Bank were the trustees and could
cover over their fraud.

1 127. That by virtue of defendants acts Plaintiff have been made to pay a higher
 2 Mortgage Payment that could have exceeded \$250.00 a month, and to ultimately
 3 default on their loan and the damage and injury to their credit standing all anticipated
 4 and planned by Defendants.

5 128. Defendants and the Doe Defendants and each of them did the acts and things
 6 herein alleged pursuant to, and in furtherance of, the conspiracy and above-alleged
 7 agreement.

8 129. Defendants and each of them as identified and known and as acquired this loan
 9 and its Notes in the Chain of title furthered the conspiracy by cooperation with each
 10 other and or lent aid and encouragement to each other and or ratified and adopted the
 11 acts of each other as they either participated in the conspiracy or acquired the Notes
 12 and deeds of Trust subject thereto in that each party was aware of the conspiracy to
 13 foreclose on large numbers of properties

14 130. As a proximate result of the wrongful acts herein alleged Plaintiff has been
 15 generally damaged in the sum of approximately and or in excess of \$10,000,000.

16 131. Due to the acts of these defendants, Plaintiff have struggled to make these
 17 payments and have been under deep and severe emotional distress all to their
 18 damage and injury for which they seek compensation in excess of \$10,000,000.

19 132. Defendants and each of them did the things herein alleged maliciously and to
 20 oppress Plaintiff. Plaintiff is therefore entitled to exemplary or punitive damages in
 21 excess of the sum of \$10,000,000.

22 **PLAINTIFF EIGHTH CLAIM FOR RELIEF**

23 **Statutory Violation of RESPA**

24 **12 USC section 2607 (b) illegal kickbacks**

25 **DEFENDANTS: PRADO, Direct Equity Mortgage**

26 132. Plaintiff re-alleges and incorporates all prior allegations as set forth above

27 133. Plaintiff is informed and believes that Direct Equity Mortgage was paid excessive
 28 points and fees during the funding and back end fees after the funding and outside of
 the escrow by PRADO to place Plaintiff in a less desirable loan. And that PRADO was

1 paid a point spread after the funding and outside off the escrow by the Bank or Trust
2 that acquired the Note from Prado. Plaintiff also is informed and believes that they
3 structured $\frac{1}{2}$ of a point for servicing this loan instead of the Normal $\frac{1}{4}$ of a Point
4 because of the way the loan was designed, and as these percentage of points affect
5 the loan and the loan terms and Plaintiff's obligation there under they were required to
6 be disclosed on the Truth In Lending Statement but Defendant failed to do so.
7

8 134. Plaintiff is further informed that Direct Equity Mortgage was paid a fee by
9 PRADO which was paid outside of escrow ("POC") and after the closing as a Yield
10 Spread Premium or point spread of \$3,746.23 which is a kick back and is an illegal fee
11 and that this fee which Plaintiff have recently discovered is an illegal fee. Plaintiff also
12 believes that Direct Equity was paid excessive fees in the following Origination fee of
13 \$2,997.00 Discount Fee of \$2,997.00, Broker Fee of \$650.00 and a Processing Fee of
14 \$495.00 for a total of fees paid \$7,139.00 plus the Yield Spread Premium of \$3,746.23,
15 and that at best they were entitled to approximately \$1,000.00 and the additional was
16 excessive and in violation of the Statutory requirements of RESPA
17
18

19 135. A yield Spread Premium a fee that is considered a kick back as it is paid for
20 placing the borrower into a higher interest rate loan or for some other disadvantage for
21 the borrower and an advantage to the initial lender and the other lenders in the chain
22 of title. The YSP is a rate spread based on the interest rate and yield of the loan.
23

24 136. Plaintiff is further informed and believes that each of the other entities that bought
25 and sold this note received back end payments upon their sale and acquisition of these
26 notes which also were not disclosed, that these fees and payments are based on the
27 loan terms and interest rate charged to Plaintiff and that these fees and payments are
28

1 a part of the loan and the cost of the loan to Plaintiff which are and were required to be
2 disclosed on the TILA and by the RESPA disclosure requirements.

3 137. That the fees and kickbacks were illegal under 12, USC 2607(b) and that
4 therefore as provided by Statute 12, USC 2607(d) Plaintiff is entitled to and seeks
5 treble damages therefore in a sum equal to or which exceeds \$12,000 from Direct
6 Equity Mortgage and PRADO and from PRADO a separate sum in excess of
7 \$21,000.00 and which sum may exceed \$ 250,000.00 for its points received upon the
8 sale of the note.
9
10

11 PLAINTIFF'S NINTH CLAIM FOR RELIEF
12 FRAUD

13 DEFENDANTS: PRADO, Direct Equity Mortgage,

14 138. Plaintiff re-alleges and incorporates all prior allegations as set forth above

15 139. On or about May 2006 DIRECT EQUITY MORTGAGE provided Plaintiff a loan
16 through PRADO. DIRECT EQUITY MORTGAGE was compensated for this loan by
17 being over paid for its services, and a Yield Spread Premium in the sum of \$3,746.23
18 and out side and after the close of Escrow. According to RESPA 12 USC 2607 a yield
19 Spread Premium is an illegal kick back. According to RESPA 12 USC 2607 fees paid
20 must be in accordance with the value of the work performed.
21

22 140. Defendant PRADO on information and belief paid DIRECT EQUITY
23 MORTGAGE fees above and beyond the value of the services actually performed and
24 an illegal kickback as stated above.

25 141. On or about May 2006. Plaintiff acquired the foregoing property by virtue of the
26 said funding through DIRECT EQUITY MORTGAGE and PRADO based on the
27 representations of Both Defendants that the loans were the best they could obtain for
28 them.

1 142. At the time of the loan Plaintiff is informed and believes that certain information
2 was concealed from him, such as that PRADO was working with DIRECT EQUITY
3 MORTGAGE against Plaintiff's interest in this loan, for example Plaintiff is informed
4 and believes that PRADO paid DIRECT EQUITY MORTGAGE a Yield Spread
5 Premium as set forth above in order to make the loan more favorable to PRADO and
6 less favorable for Plaintiff by providing a higher rate of interest to Plaintiff or some less
7 desirable terms of the loan, in order that the loan was worth more money to PRADO
8 when and as they sold his loan(s)
9

10 143. Defendants represented to Plaintiff that DIRECT EQUITY MORTGAGE was
11 working for Plaintiff and in their best interest to obtain for them the best loan and at
12 the best rates available.
13

14 144. On or about May, 2006 Plaintiff entered into the loan for the foregoing property
15 based on the representations of these Defendants.
16

17 145. That Plaintiff relied on the representations and his reliance was justified.

18 146. That at the time DIRECT EQUITY MORTGAGE made these representations to
19 Plaintiff they knew that they were untrue and that these representations were material
20 representations.
21

22 147. That the foregoing representations were made in order to induce Plaintiff to act
23 on and take the said loan(s) in order for both defendants to make a substantial
24 amount of money thereby and there from.

25 148. Plaintiff were induced to and did take this loan based on the said representations
26
27
28

1 149. That Plaintiff were induced to rely and did rely on the representations of these
2 defendants through deception and his reliance was justified as he believed that
3 DIRECT EQUITY MORTGAGE was working for him and in his best interest.

4
5 150. That by virtue of Plaintiff's reliance and the increased interest he was made to
6 pay, he has been damaged in the loss of his good credit and is now being involved in
7 litigation that he did not bargain for, all to his damage and injury.

8 151. That Plaintiff's actual damages so far exceed \$800,000.

9
10 152. That defendants misconduct was malicious oppressive and fraudulent and was
11 in reckless disregard for Plaintiff' financial and emotional well being and Plaintiff
12 therefore requests Exemplary damages of \$5,000,000.

13 PLAINTIFF TENTH CLAIM FOR RELIEF

14 BREACH OF FIDUCIARY DUTY

15 DEFENDANTS PRADO AND DIRECT EQUITY MORTGAGE

16 153. Plaintiff re-alleges and incorporates each and every allegation as set forth above
17 154 Plaintiff alleges that Defendant Direct Equity Mortgage at all times relevant was in
18 a fiduciary relationship with Plaintiff and owed Plaintiff a duty of Care, of Loyalty and
19 Honesty.

20 155. That Defendant was in a superior position and had control over Plaintiff and the
21 loan Plaintiff would accept and therefore Owed Plaintiff a special duty of honesty.

22 156. That Defendant Direct Equity Mortgage and Prado entered into a civil conspiracy
23 for the purpose of placing Plaintiff in a loan that was not to Plaintiff' advantage but
24 was for the advantage of Defendants and both of them as follows:
25

26 157. Defendant Prado paid Direct Equity Mortgage a Yield Spread Premium as a kick
27 back for placing Plaintiff in a loan with a higher interest rate then Plaintiff qualified for
28

1 or that Defendant Prado provided for other borrowers, or placed Plaintiff on some
2 other based on terms less favorable to Plaintiff and that was not to their advantage.

3
4 158. The purpose of the Yield Spread Premium also known as a kick Back was
5 concealed from Plaintiff.

6 159. Defendant Direct Equity Mortgage owed Plaintiff a special duty of Honesty and
7 Loyalty requiring Defendant to act in the best interest of Plaintiff

8
9 160. Defendant Direct Equity Mortgage breached this duty of care by acting in their
10 own interest and against Plaintiff

11 161. Defendant Prado conspired with defendant Direct Equity Mortgage to induce him
12 or it to breach this duty owed to Plaintiff and is therefore liable for all damages
13 sustained by Plaintiff thereby.

14
15 162. By Virtue of Defendants acts which were intentional and for a monetary gain
16 Plaintiff have been damaged as follows

17 (a)The additional interest paid during the term of the loan which is believed to exceed
18 \$200,000

19
20 163. That Defendants conduct was oppressive, malicious and Fraudulent so as to
21 justify an award or exemplary damages and that by virtue of defendants conduct
22 which was in reckless disregard for Plaintiff's financial or emotional well being Plaintiff
23 is entitled to and seek exemplary damages of \$10,000,000.

24 PLAINTIFF ELEVENTH CLAIM FOR RELIEF
25 CIVIL CONSPIRACY
26 TO BREACH OF FIDUCIARY DUTY
27 DEFENDANT
28 DIRECT EQUITY MORTGAGE AND, Prado
Does 1-X and Roes 1-X

164. Plaintiff re-alleges and incorporates all allegations as set forth above.

1 165. Plaintiff is informed and believes and thereon alleges that, at all times herein
2 mentioned each of the defendants sued herein was the agent and employee of each
3 of the remaining defendants and was at all times acting within the purpose and scope
4 of such agency and employment.

5 166. On or about May, 2006, Defendant Direct Equity Mortgage and Prado and each
6 of them knowingly and willfully conspired and agreed among themselves to place
7 Plaintiff in an interest rate or other loan that was more advantageous too them and
8 less advantageous to Plaintiff, in order that Prado would pay to Direct Equity
9 Mortgage a Yield Spread Premium of at lease \$3,746.23

10 167. Defendant Direct Equity Mortgage at the time had a Fiduciary relationship with
11 Plaintiff and owed Plaintiff a duty of honesty and loyalty. Defendant Prado either
12 knew or shown have known of this relationship and duty.

13 168, Defendant Direct Equity Mortgage breached this duty of care by acting in their
14 own interest rather than in the best interest of Plaintiff.

15 169. Defendant Prado aided and or induced Defendant Direct Equity Mortgage to
16 breach this duty for the benefit that Prado would derive upon its sale of the Note due
17 to the higher interest Rate and or terms to Prado's Advantage and the yield Spread.

18 170. That by virtue of defendants acts Plaintiff has been made to pay a higher
19 Mortgage Payment that could have exceeded \$250.00 a month, and to ultimately
20 default on his loan and the damage and injury to his credit standing.

21 171. Defendant Direct Equity Mortgage and Prado and the Doe Defendants and each
22 of them did the acts and things herein alleged pursuant to, and in furtherance of, the
23 conspiracy and above-alleged agreement.

24 172. Defendants and each of them as identified and known and as acquired this loan
25 and its Notes in the Chain of title furthered the conspiracy by cooperation with each
26 other and or lent aid and encouragement to each other and or ratified and adopted the
27 acts of each other as they either participated in the conspiracy or acquired the Notes
28 and deeds of Trust subject to, in that each party was aware that the kick back (YSP)
was paid and the purpose of the payment and the additional value of the loan due to

1 this increased interest rate, and that knowing these things they acquired the Notes
2 and the payment stream there from.

3 173. As a proximate result of the wrongful acts herein alleged Plaintiff have been
4 generally damaged in the sum in excess of \$250,000

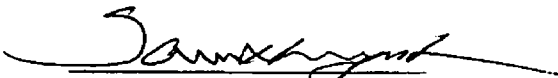
5 174. Due to the acts of these defendants, Plaintiff has struggled to make these
6 payments and have been under deep and severe emotional distress all to their
7 damage and injury for which they seek compensation.

8 175. Defendants and each of them did the things herein alleged maliciously and to
9 oppress plaintiff. Plaintiff is therefore entitled to exemplary or punitive damages in the
10 sum of \$5,000,000.

11 WHEREFORE, Plaintiff demands judgment for:

- 12 1. A Mandatory Injunction and order, requiring Defendant to Reinstate Plaintiff on title
13 to their Property, and a restraining order preventing Defendants and his, hers, or its
14 agents, employees, officers, attorneys, and representatives from engaging in or
15 performing any of the following acts: (i) offering, or advertising this property for sale
16 and (ii) attempting to transfer title to this property.
- 17 2. Actual Damages against defendant in excess of \$10,000
- 18 3. Exemplary Damages in excess of \$10,000
- 19 4. Costs of this action, and attorney's fees as they become appropriate
- 20 5. For a declaration that Defendants are not the legal owners of the note and Trust
21 Deed and had no right to foreclose on Plaintiff property.
- 22 6. To set aside the Foreclosure and For reinstatement of Plaintiff on title.
- 23 7. For such other and further relief as the court deems proper

24 Dated: July 1, 2008

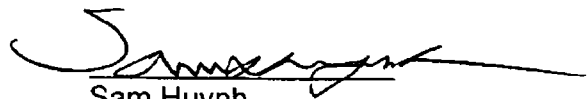
25 
26 Sam Huynh

VERIFICATION

I, Sam Huynh am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that her declaration was executed at Clark County, Nevada.

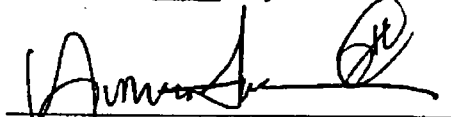
DATED: ~~July~~ 1, 2008


Sam Huynh

ACKNOWLEDGMENT

Before me a notary public in and for the County of Clark, State of Nevada personally appeared: Sam Huynh who upon satisfactory proof shown to me established that she was the party who signed the foregoing complaint.

Dated this 1st day of July 2008


Notary Public in and for said County and State

